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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION
TELECOMMUNICATIONS DIVISION

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE INDIANA)
UTILITY REGULATORY COMMISSION'S)
OBLIGATIONS PURSUANT TO HEA 1279)
FOR THE PROTECTION OF CERTAIN)
INFORMATION PROVIDED IN RESPONSE)
TO THE COMMISSION'S 2006)
COMMUNICATIONS SURVEY AS TRADE)
SECRET AND CONFIDENTIAL PURSUANT)
TO INDIANA CODE 8-1-2.6-13)

CAUSE NO. 43227

APPROVED: FEB 28 2007

BY THE COMMISSION:

Larry S. Landis, Commissioner

Lorraine Hitz-Bradley, Administrative Law Judge

On March 14, 2006, the Governor of the State of Indiana signed into law House Enrolled Act 1279 ("HEA 1279"), as enacted by the 2006 Indiana General Assembly. In accordance with Indiana Code 8-1-2.6-4, as amended, the Indiana Utility Regulatory Commission ("Commission") must annually report to the Indiana legislature, through the regulatory flexibility committee, on the effects of competition and technological change on all Indiana telecommunications services and the status of competition and technological change in the provision of video service. I.C. §8-1-2.6-4 and I.C. §8-1-1-2. Explicit in this mandate is the obligation to safeguard the confidential nature of potentially sensitive material submitted to the Commission. *See*, I.C. §§8-1-2.6-13(d)(9)((A)(ii), 8-1-32.5-6(a)(9)(B), 8-1-32.5-6(d).

Consistent with those regulatory obligations, the Commission has developed a Communications Survey to gather data to report to the General Assembly. The Commission has also determined that a streamlined procedure is necessary for the submission of confidential information by carriers in response to our annual Communications Survey.

1. **Commission Jurisdiction.** The Commission is required to safeguard the confidential nature of potentially sensitive material submitted to the Commission. *See* I.C. §§8-1-2.6-13(d)(9)((A)(ii), 8-1-32.5-6(a)(9)(B), 8-1-32.5-6(d). In addition, the Commission may prescribe such regulation as it sees fit regarding the submission of confidential documents. 170 I.A.C. 1-1.1-4. Therefore, the Commission has jurisdiction over the subject matter of this proceeding to the extent provided by law.

2. **Commission Discussion and Findings.** In the past, the Commission's issuance of surveys has resulted in multiple individual requests by carriers for confidential treatment of certain portions of survey responses. Consistent with the Commission's streamlined regulatory responsibilities, the Commission finds that such piecemeal submissions do not serve the best interests of carriers or the Commission. Therefore, the Commission is issuing this Order to provide a streamlined process to allow for the timely and orderly submission of responses which

carriers believe should be accorded confidential treatment. This docket is to allow for submission of confidentiality requests, and subsequent filing of confidential documents. **This cause is not for submission of general responses to the Communications Survey itself, which should be submitted directly to the Commission's Telecommunications staff.** Those carriers that do not feel it necessary to seek confidential treatment for their responses to the Communications Survey do not need to file anything in this cause, and may simply complete the survey and submit it to the Commission's staff directly.

The Commission has reviewed the Communications Survey and has determined the information below, requested as part of our annual Communications Survey, may meet the standards of confidentiality under our statutes. As such, we find it appropriate to grant confidential treatment on a preliminary basis to information in the following categories, subject to carriers' proper submission of a request as set forth more fully below.

Part II. Basic Telecommunications Services. Section 2. Percentage of customers subscribed to basic telecommunications service in carriers' service area since 2004.

Part III. Video Services. Section (B). Number of subscribers to basic service. Section (C) Number of subscribers to all other video services. Narrative question. Information as to changes instituted in the carriers' business (technological deployment, pricing, packaging, etc.) that were in response to competition the carrier faces.

Part IV(B) Estimated Broadband Availability. Estimated broadband availability in each county to which broadband connection service could be provided by carrier or carrier's affiliate.

While such information may be accorded preliminary confidentiality, carriers must still request such treatment, using the following protocol.

- A. **On or before April 6, 2007, a carrier must file a written request for confidential treatment.** The request must contain a sworn statement that describes the nature of the confidential information, the reasons why the material should be treated as confidential pursuant to I.C. 8-1-2-29 and I.C. 5-14-3, and the efforts made to maintain the confidentiality of the material. 170 I.A.C. 1-1.1-4(b). Trade secret information is generally defined as containing four (4) elements: 1) information; 2) deriving independent economic value; 3) not generally known, or readily ascertainable by proper means by others who can obtain economic value from its disclosure or use; and 4) the subject of efforts, reasonable under the circumstances to maintain it secrecy. *Burk v. Heritage Food Serv. Equip., Inc.*, 737 N.E.2d 803, 813 (Ind. App. 2000).
- B. Each requesting carrier will be accorded an individual sub-docket number under this Cause upon the filing of the request.
- C. **The confidential responses should be submitted simultaneously with the request for confidential treatment, hand delivered to the Presiding Officer in a sealed envelope that is clearly marked "confidential" with the sub-docket Cause Number noted thereon. The confidential responses**

must be submitted on light green paper, thereby readily identifying the information as confidential.

The above-described portion of survey responses submitted in this manner will be deemed preliminarily confidential, to allow for review by the Commission. Concurrently, the carrier must submit a copy of the Communications Survey to the Commission's Telecommunications Division, with the confidential sections redacted.

Carriers may also request confidential treatment of other sections of the Communications Survey using the standard confidentiality protocol. **The Commission finds that carriers desiring confidential treatment for other sections of the Communications Survey must submit those requests on or before March 16, 2007.** Such requests must comply with 170 I.A.C. 1-1.1-4. This rule states that a written application for a finding of confidentiality must be filed on or before the date the material is to be filed, accompanied by a sworn statement that describes the nature of the confidential information, the reasons why the material should be treated as confidential pursuant to I.C. 8-1-2-29 and I.C. 5-14-3, and the efforts made to maintain the confidentiality of the material. 170 I.A.C. 1-1.1-4(b). Once the confidentiality request is received, the Presiding Officer will review the requests, and render a ruling within ten (10) business days of receipt as to whether the documentation should be accorded confidential treatment.

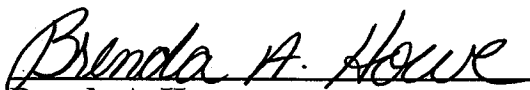
IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. All communications carriers requesting confidential treatment of their responses to the Commission's 2007 Communications Survey must file the responses as outlined herein.
2. This Order shall be effective on and after the date of its approval.

HARDY, GOLC, LANDIS, SERVER, AND ZIEGNER CONCUR:

APPROVED: FEB 28 2007

I hereby certify that the above is a true and correct copy of the Order as approved.


Brenda A. Howe
Executive Secretary to the Commission

